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754 683 merely because he was believed to possess the powers of a wizard, but because it was thought he had used his art to kill or seriously injure someone else. Thus the wizard (or witch) was not punished for being a wizard, according to the understanding of the people themselves, but for being a murderer.

• 684 Adultery was punished among the Creeks and other southern tribes in such a striking manner that almost every traveler in that section has recorded something about the custom. The first report of it was given by Garcilasso from information furnished by two old soldiers of De Soto's army and is as follows:

"Before leaving the province of Tuscaluça, it is proper to relate the manner in which the laws of this country and of that of Coça, punish adulteresses. There is, in this last province, a law which decrees, upon penalty of death, that if any one has sufficient indications to believe that a woman is an adulteress, he has to inquire into it and impeach her before the cacique, or, in his absence, before the local judges. These judges upon the report that is made to them, secretly hold an inquest against the person accused, and arrest her if they find her guilty. Afterwards, at the first festival, they order to be published that the inhabitants, on going out from their dinner repair to a certain place outside of the village, and that there they all arrange themselves in a row. Then come the judges, of whom two place themselves at one end of this file, and two at the other. They first decree that they bring to them the adulteress, and then they say to her husband who is present, that she is convicted of a lewd life, and that he must deal with her according to the rigor of the law. The husband strips her entirely naked, and shaves her with a kind of razor of flint; a disgraceful punishment and common among the Indians of the new world. Then to show that he repudiates her, he leaves with the clothes of his wife, and abandons her to the power of the judges. Two immediately command the criminal to pass in front of the persons who are in a row, and to go and declare her crime to the other two officers. She obeys, and as soon as she draws near to them she tells them that she is convicted of adultery and condemned to the penalty with which the law punishes that crime; that she is sent to them in order that they may do with her what it shall please them for the welfare of the province. The judges immediately send her back with this answer: that it is just that the laws that are made with a view to the preservation of public virtue should be inviolably observed; that therefore they confirm the sentence which they have rendered against her, and order her in the future not to relapse again into her crime. Thereupon she returns to the first judges, and the people who are in a row hiss her, and endeavor by means of insults, to increase her shame. In the mean time the people who come in a crowd and see her naked, yell at her. Some

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cast clods of earth at her, and others straw, and others old rags and pieces of mats and other like things, the law ordering it so, and they regard this poor woman only as the disgrace of her sex. After all these inflictions, the judge banishes her from the country and places her in the hands of her parents, with orders, upon pain of exemplary punishment, not to permit her to enter into any place of the province. The parents receive her, and as soon as they cover her with a mantle they lead her away into a place where she is never seen by any Indian of the country; and at the same time the judges permit the husband to take another wife. Thus they punish, in Coça, the Indian women who violate the faith which they owe to those whom they marry. But in the province of Tuscaluça they punish them with still greater rigor. The law of this country decrees that if, at an unseasonable hour, they see any one enter and leave three or four times a house, and that they suspect the mistress of the lodge of adultery, they are obliged, by the religion of the country, to inform the husband of the conduct of his wife, and to prove, by three or four witnesses, that they assert nothing but the truth. The husband, at the same time, assembles the witnesses, and interrogates them one after another, with horrible imprecations against him who lies, and great benedictions in favor of him who discloses the truth.

"Afterwards, if he finds his wife sufficiently convicted of having violated her faith, he leads her out of the village, ties her to a tree or to a post which he fixes in the ground, and shoots her to death with arrows. Then he goes to the cacique, or, in his absence, to the justice of the place. He tells them that, in such a place outside of the village, he has just killed his wife, upon information that she had committed adultery; that he petitions them to summon the accusers, in order that, if the crime of which they charge her is true, he might be formally acquitted, and, if the contrary, he might receive the punishment decreed by the law of the province. In the latter case, the law commands the parents of the wife to shoot the husband to death with arrows; that he be the prey of dogs and birds, and that his wife, as a mark of her innocence, be honorably interred; that if the witnesses persisted in their evidence and did not contradict themselves, in a word, if they verified by good proofs the crime in question, they acquitted the husband, with the liberty to take a wife, and forbid, upon pain of death, the parents of the criminal from drawing a single arrow from her body, or even interring it, because it was necessary that she should serve as an example and be devoured by beasts. We see by this that, in all Florida they punished very rigorously adulteresses. But we do not know in what manner they punished the men who debauched the wives of others." [4]

[4] Shipp's Gaschasse, pp. 282-283.

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*684 The Coça were represented in later years by part of the Upper Creeks and the Tuscaluça by the Mobile Indians, and the customs recorded here do not accord with the later customs known to have been in vogue among either. Nevertheless, as we shall presently see, Adair mentions the custom of shooting adulteresses to death as one formerly in vogue in the very region from which Garcilasso reports it. He does not say what tribe was addicted to this, but it would seem to have been one of those near the junction of the Coosa and Tallapoosa Rivers. The Mobile do not appear to have preserved this usage, as none of the French writers mentions it. This may have been due to the enormous losses they had suffered from the Spaniards and from other tribes of Indians. Hawkins says that the Creek punishment for adultery was unknown among the Alabama.[43] but he is contradicted by Bossu who describes it in some detail.[44] Regarding the ordeal which Garcilasso attributes to the Coça there are two possible explanations: either his informants had obtained only an imperfect account of the custom or the usage changed between the time of De Soto and the later English and French settlements. There is some reason to believe that the latter explanation is partly correct, because Hakwins, writing near the end of the eighteenth century, says that the law regarding adultery, along with many other usages, originated with the Abihka Indians.[45] These people are nowhere mentioned in the De Soto narratives and may not have been in the country in De Soto's time.

Adair, as usual, gives a very complete account, containing information not found elsewhere. He says:[46]

"The middle aged people of a place, which lies about half-way to Mobile, and the Illinois (from Carolina), assure us, that they remember when adultery was punished among them with death, by shooting the offender with barbed arrows, as there are no stones there. But what with the losses of their people at war with the French and their savage confederates, and the constitutional wantonness of their young men and women, they have through a political desire of continuing, or increasing their numbers, moderated the severity of that law, and reduced it to the present standard of punishment; which is in the following manner. If a married woman is detected in adultery by one person, the evidence is deemed good in judgment against her; the evidence of a well grown boy or girl, they even reckon sufficient, because of the heinousness of the crime, and

[43] Ga. Hist. Soc. Colls., vol. III, p. 37.

[44] See p. 351.

[45] Hawkins in Ga. Hist. Soc. Colls., vol. III, p. 42.

[46] As Adair's account is somewhat confused it should be explained that, after speaking of the people who formerly punished adultery by shooting the offender with arrows, he proceeds to describe the Chickasaw method of punishment. Then he takes up the Muskogee customs and reverts to the Chickasaw in the next to the last paragraph of the quotation, concluding with a final paragraph on the Muskogee.

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the difficulty of discovering it in their thick forests. . . . When the crime is proved against the woman, the enraged husband accompanied by some of his relations, surprises and beats her most barbarously, and then cuts off her hair and nose, or one of her lips. There are many of that sort of disfigured females among the Chikkasah, and they are commonly the best featured, and the most tempting of any of their country-women, which exposed them to the snares of young men. But their fellow-criminals, who probably first tempted them, are partially exempted from any kind of corporal punishment.

"With the Muskohge Indians, it was formerly reckoned adultery, if a man took a pitcher of water off a married woman's head, and drank of it. But their law said, if he was a few steps apart, and she at his request set it down, and retired a little way off, he might then drink without exposing her to any danger. . . .

"Among those Indians, when adultery is discovered, the offending parties commonly set off speedily for the distant woods, to secure themselves from the shameful badge of the sharp penal law, which they inevitably get, if they can be taken before the yearly offering for the atonement of sin; afterward, every crime except murder is forgiven. But they are always pursued, and frequently overtaken; though perhaps, three or four moons absent, and two hundred miles off, over hills and mountains, up and down many creeks and rivers on contrary courses, and by intricate windings—the pursuers are eager, and their hearts burn within them for revenge. When the husband has the chilling news first whispered in his ear, he steals off with his witness to some of his kinsmen, to get them to assist him in revenging his injury; they are soon joined by a sufficient number of the same family, if the criminal was not of the same tribe [town]; otherwise, he chuses to confide in his nearest relations. When the witness has asserted to them the truth of his evidence by a strong asseveration, they separate to avoid suspicion, and meet commonly in the dusk of the evening, near the town of the adulterer, where each of them provides a small hoop-pole, tapering to the point, with knobs half an inch long, (allowed by ancient custom) with which they correct the sinners; for as their law in this case doth not allow partiality, if they punished one of them and either excused or let the other escape from justice, like the Illinois, they would become liable to such punishment as they had inflicted upon either of the parties.[47]

"They commonly begin with the adulterer, because of the two, he is the more capable of making his escape: They generally attack him at night, by surprise, lest he should make a desperate resistance, and blood be shed to cry for blood. They fall on eager and merciless,

[47] If the male offender escaped punishment could be inflicted on a relative. See Hawkins (p. 33) and Claiborne (p. 33).

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•684 whooping their revengeful noise, and thrashing their captive, with their long-knobbed hoop-flails; some over his head and face; others on his shoulders and back. His belly, sides, legs, and arms, are gashed all over, and at last, he happily seems to be insensible of pain: then they cut off his ears. . . .

"They observe, however, a graduation of punishment, according to the criminality of the adulteress. For the first breach of the marriage faith they crop her ears and hair, if the husband is spiteful: either of those badges proclaims her to be a whore, or *Hakse Kaneha*. . . . for the hair of their head is their ornament: when loose it completely reaches below their back; and when tied, it stands below the crown of the head, about four inches long, and two broad. As the offender cuts a comical figure among the rest of the women, by being trimmed so sharp, she always keeps her dark winter hot house, till by keeping the hair moistened with grease, it grows so long as to bear tying. Then she accustoms herself to the light by degrees; and soon some worthless fellow, according to their standard, buys her for his *Aná;* which term hath been already explained.

"The adulterer's ears are flashed off close to his head, for the first act of adultery, because he is the chief in fault. If the criminals repeat the crime with any other married persons, their noses and upper lips are cut off. But the third crime of the like nature, is attended with more danger; for the law says, that for public heinous crimes, satisfaction should be made visible to the people, and adequate to the injuries of the virtuous—to set their aggrieved hearts at ease, and prevent others from following such a dangerous crooked copy. As they will not comply with their mitigated law of adultery nor be terrified, nor shamed from their ill course of life; that the one may not frighten and abuse their wives, nor the other seduce their husbands and be a lasting plague and shame to the whole society, they are ordered by their ruling magi and war-chieftains, to be shot to death, which is accordingly executed; but this seldom happens.

"When I asked the Chikkasah the reason of the inequality of their marriage-law, in punishing the weaker passive party, and exempting the stronger, contrary to reason and justice; they told me, it had been so a considerable time—because their land being a continual seat of war, and the lurking enemy for ever pelting them without, and the women decoying them within, if they put such old cross laws of marriage in force, all their beloved brisk warriors would soon be spoiled, and their habitations turned to a wild waste. . . .

"The Muskohge Indians . . . oblige the adulteress under the penalty of the severest law not to be free with any man, (unless she is inclined to favour her fellow sufferer) during the space of four moons, after the broken moon in which they suffered for each other, according to the custom of the Maldivians. But her husband

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exposes himself to the utmost severity of the marriage law, if he is known to hold a familiar intercourse with her after the time of her punishment." [48]

Hodgson, on the authority of an old Creek trader, says that a husband who connived at the return of an adulterous wife from exile was liable to suffer the very penalties that had been inflicted upon her.[49]

Bossu's account, already alluded to, of the method in which punishment was inflicted among the Alabama, is as follows:

"It is first necessary that the husband be satisfied with his own eyes, and then the delinquent woman is spied upon by the relatives of the husband and by her own. It would be vain for the husband to wish to keep the unfaithful wife, he is no longer master of the situation: here is the reason for this, it is that the savages regard it as scandalous for a true man to live with a woman who has failed him so signally. In such a conjuncture the husband goes to find the chief, and lays the case before him. The chief then orders people to cut sticks; great secrecy is preserved. The chief then appoints a dance, at which everyone is obliged to be present, men, women, girls, and boys; if one is absent he pays a penalty; but no one ordinarily absents himself; at the moment when the dance is at its height they seize the adulteress, throw her on the ground, and then beat her on her back and on the front part of her body without sparing her. The one who seduced her receives the same treatment.

"When these unfortunates have been well castigated a relative belonging to each side approaches and puts a rod between the beaters and the beaten. Instantly all blows cease; but the woman is not yet free; her husband comes and cuts off her hair close to her head, and then he reproaches her in the presence of the assembly; that is to say he depicts to her how wrongly she has treated him, he never having let her want for anything, and that since it is so she can go with her seducer. They cut off his plaited hair all about, which falls in part over the foreheads of these people; after that they say to him, pointing to the unfaithful woman, 'There is your wife.' He is allowed to marry her on the spot but he is obliged to change his village.

"When it happens that a woman debauches the husband of another, the women assemble with rods as long as their arms, and go to seek for the culprit whom they beat unmercifully, which makes the young people laugh very much; if they did not finally snatch the rods from the hands of these furies they would kill the unfortunate culprit." [50]

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[48] Adair, Hist. Am. Inds., pp. 143-146.
[49] Hodgson, Jour. through N. Am., pp. 257-262.
[50] Bossu, Nouv. Voy., vol. II, pp. 32-34.

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•684 The accounts of Hawkins and Pope regarding this punishment also deserve insertion. Hawkins states that adultery "is punished by the family or tribe of the husband. They collect, consult and decree. If the proof is clear, and they determine to punish the offenders, they divide and proceed to apprehend them. One half goes to the house of the woman, the remainder to the family house of the adulterer; or they go together, as they have decreed. They apprehend the offenders, beat them severely with sticks, and then crop them. They cut off the hair of the woman, which they carry to the square in triumph. If they apprehend but one of the offenders, and the other escapes, they then go and take satisfaction from the nearest relation.[80a] If both the offenders escape, and the tribe or family return home, and lay down the sticks, the crime is satisfied. There is one family only, the 'Wind,' (Ho-tul-ul-gee), that can take up the sticks a second time. This crime is satisfied in another way, if the parties offending absent themselves till the Boos-ke-tuh is over. Then all crimes are done away except murder. And the bare mention of them, or any occurrence which brings them in recollection, is forbidden." [81]

Pope says:

"Upon a detection of the crime, about 50 or 60 persons of each sex, repair to a thicket, and supply themselves with hickory clubs; this done, the men determine upon the measure of punishment to be inflicted on the woman and permit the women to decide upon the man's. They then separate, brandishing their clubs; the men in quest of the woman, the women in quest of the man. The adulteress when found, is seized upon, and ignominiously dragged into a circle formed by the men, who beat her with their clubs till she can no longer stand; and whilst extended on the ground, the avengers proceed to dock her hair, crop her ears, and slit her nostrils; of all this her inamorato, is made an unwilling spectator, and sometimes an agent; who, in turn, suffers a similar disgrace in the circle of the women, his fair Dulcinea looking on. What I have here mentioned are the highest punishments they ever inflict, even upon the most atrocious offenders. Simetimes they dispense with cropping their ears and slitting the nostrils, and content themselves, with giving the offender a sound drubbing with a short dock. . . .

"If the club bearers ever relinquish, or lay down their clubs through any mishap or necessity; before they encircle the object of their vengeance, they dare not resume them again, as it is presumed, that it was so ordered by their God, in tender mercy to the delinquents, who are accordingly acquitted of that offense." [82]

[80a] There is an apparent contradiction with Adair here but it is reconciled by Claiborne (p. 353).
[81] Hawkins, Ga. Hist. Soc. Colls., vol. III, p. 74.
[82] Pope, Tour, pp. 55-58.

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In stating that punishment was inflicted on the male offender by the women and on the female offender by the men Pope differs from all other writers.

Claiborne is also brief:

"If the woman violates her fidelity before the green-corn dance [among the Creeks] she is whipped severely, her ears cut off and tied to the sticks with which she was beaten and the sticks set up in the town square for the people to look at. They serve the man who seduced her in the same way. If the man clears out, and cannot be caught, the clansmen of the injured husband punish his nearest relation in his stead. If the woman be punished and not her seducer, or his relation, the clan of the woman inflict upon the leader of the party that punished her, the same punishment which she had endured, and there the thing ends."[53]

Romans dismisses the matter shortly:

"Adultery is punished by severe flagellations and loss of hair, nose, and ears, in both parties, if they are taken; sometimes they spare the nose of the man, and I have known some instances of white men having this misfortune and being obliged to apply to the Commissary, or the nearest Governor for a certificate to secure them from the imputation of the pillory."[54]

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Stiggins informs us that a man could take a second wife or concubine only with the consent of his first wife, and if he did not obtain it he was treated as an adulterer and punished as such by his wife's family,[55] and also that a widow or widower who married before the expiration of the prescribed period of mourning was so treated.[56] In this he is confirmed by Swan.[57]

The prerogative of the Wind clan mentioned by Hawkins is confirmed by Swan,[58] Stiggins,[59] and my informant Jackson Lewis. According to another authority the Wind clan could take up the clubs four times and the Bear clan could take them up twice,[60] but this may have been the case in some one town. Stiggins adds that the same privilege was enjoyed by members of the Wind clan in the case of minor offenses such as stealing.[61] There were no doubt many variations in the procedure, several of which are indicated in the accounts already given. In later times the penalty was probably softened. Mr. McCombs told me that for the first commission of adultery the man and woman were both beaten and the soft lobes

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[53] Claiborne, Mis., vol. I, p. 402.
[54] Romans, Nat. Hist. E. and W. Fla., p. 96.
[55] See p. 373.
[56] See pp. 378-379.
[57] See p. 378.
[58] Swan in Schoolcraft, Ind. Tribes, vol. v, p. 269.
[59] Stiggins, Ms. Hist. Narr., p. 28.
[60] The agent Mitchell as reported by Gallatin in Trans. Am. Antiq. Soc., vol. II, p. 111, 1836.
[61] Stiggins, Ms., p. 28.

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*684 of their ears where the earrings were commonly worn were cut off; for the second offense the whole ear was cut off; and for the third offense they cut off the nose, saying to the culprit "You have not sense enough to smell anything." He added that if a man had a wife and children and some other woman began running about with him, the women inflicted the punishment. They would rush upon their victim, foaming at the mouth like mad tigers, tear off her clothing and leave her all covered with blood. Meantime the men related to the woman's husband would gather round and, if they saw matters were likely to be carried to extremes, pull the woman away.

As the evidence of a single person was admitted, frequently a very young one at that, the innocent sometimes suffered, and the attentions of the Indians were often extended to white traders among them, in many cases no doubt on the most ample grounds.

836 If we were to accept Swan's testimony we should have to suppose that sexual looseness before marriage was not punished nor indeed curtailed in the smallest degree. He says:

"Simple fornication is no crime or reproach among the Creeks; the sexes indulge their propensities with each other promiscuously, unrestrained by law or custom, and without secrecy or shame. If a young woman becomes pregnant before she is married, which most of them do, the child is maintained in her clan without the least murmuring." [82]

Hodgson also declares that "female licentiousness before marriage is not attended with loss of character," [83] and Romans that "they will never scruple to sell the use of their bodies when they can do it in private" and "the savages think a young woman nothing the worse for making use of her body, as they term it." [84]

Bossu and Hitchcock testify to the same effect,[85] the latter attributing the abuse to the influence of polygamy.[86]

Nevertheless, from what may be gathered from other sources, it is evident that there were limits beyond which a young person could not go without being made to suffer in consequence.

At the meetings of the clan to which the offender belonged he (or she) would probably be reprimanded by the oldest clan uncle and perhaps "dry scratched" or whipped. The former punishment was inflicted by means of an implement made of gar teeth, or in later times needles. One person grasped the arms of the victim and held them about the ball-post while the scratching was done, and the latter usually bore it in stoical silence for fear of the ridicule of his companions. Another punishment was sarcasm, in which the Indians are

[82] Swan in Schoolcraft, Ind. Tribes, vol. v, p. 272.
[83] Hodgson, Journey through N. Am., pp. 267–268.
[84] Romans, Nat. Hist. of E. and W. Fla., p. 97
[85] See p. 370.
[86] Hitchcock, Ms. notes.

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adepts. They would praise the culprit in the highest manner, reviewing with the most circumstantial details his assumed virtuous actions, the exact opposite, of course, of the things he had really done, until he was only too glad to flee from the general ridicule.

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The punishment usually meted out to those members of different but linked clans who had carnal intercourse with each other was "the long scratch" (sapka tcapko), performed by inserting a gar tooth or needle in the skin at the back of the neck and making a shallow cut along the spine and then on down to the heel. The pain was, of course, intense, but the public shame attending the performance, which took place in the presence of all of the people, was very much worse. As one man put it, it was to show that the offenders were no better than brutes and placed a stigma for life upon the parties undergoing it. According to another informant, instead of being dry scratched, the culprits were flogged very severely. At Chiaha the scratching took place at the northeast corner of the square ground. Mr. William McCombs, of this town, remembered that during the Civil War a Potato man and a Raccoon woman were in danger of a thrashing for having consorted together.

If the offenders belonged to the same clan the punishment was worse—often death. An Abihka Indian told me that he remembered a case in which a woman of the Wind clan was beaten to death for an offense of the kind. Another informant stated that for the first offense in such cases the long scratch was the sole punishment, but flogging for the second. Still another claimed that flogging was the penalty for the first offense, the nose and ears also being cut off. In later times they omitted cutting off the nose. Flogging was also the punishment among the Texas Alabama, but in more ancient times it is though that the penalty was more severe. At any rate, this crime was considered so dreadful by the Alabama that it was believed "the earth might burn up" in consequence of it, and the sentiment is so strong down to the present day that there are only three instances of endogamous marriages, while far more marriages take place outside of linked clans among all the people of the Creek confederacy. For instance, one of my interpreters belonged to the Panther clan, his father was an Alligator, and his wife a Bear. Another belonged to the Aktayatci, his father was a Bear, and his father's father a Panther. Still another belonged to the Deer, his father to the Raccoon, and his father's father to the Potato. The last lived at Tukabahchee where marriage between the Potato and Raccoon was allowed.

Related to these crimes was one mentioned by Adair when he says that the Muskogee came near putting some white traders to death because, when "in their cups," they forcibly viewed the nakedness of a woman who was reputed to be a hermaphrodite, and he states

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684 that this was "according to one of their old laws against crimes of that kind." [67]

In another place Adair speaks of the nonobservance of the separation of a woman during her menstrual periods as a crime on a par with murder and adultery. "Should any of the Indian women violate this law of purity," he says, "they would be censured, and suffer for any sudden sickness, or death that might happen among the people." [68]

685 Punishments similar to those described above were resorted to in cases of theft, which anciently do not appear to have been common within the tribe. Hodgson, relying on an Indian trader of 15 years' experience, says of this:

"Stealing is punished, for the first offence, by whipping; for the second, by the loss of the ears; for the third, by death—the amount stolen being disregarded. My host remembers when there was no law against stealing; the crime itself being almost unknown—when the Indians would go hunting, or 'frolicking,' for one or two days, leaving their clothes on the bushes opposite their wigwams, in a populous neighborhood, or their silver trinkets and ornaments hanging in their open huts. Confidence and generosity were then their characteristic virtues. A desire of gain, caught from the whites, has chilled their liberality; and abused credulity has taught them suspicion and deceit." [69]

[177] It is to be feared that this is in part another case of "the good old days" which do not appear as good on close examination, but, for economic reasons, it is certain that stealing was not one of those sins characteristic of the southeastern Indians before white contact.

As to the penalties inflicted for theft, Hodgson's informant is substantially confirmed by Gregg. "Most inferior crimes," he says, "are punished by whipping; for the first offence of stealing, fifty lashes; for the second, a hundred and ears cropped," and he has already stated that death was the penalty for the third.[70]

Swan says that McGillivray introduced the law that "if an Indian steals a horse, he is liable . . . to return him, or another of equal value, and pay a fine of thirty chalks, or fifteen dollars; if he is unable to do so, he may be tied and whipped thirty lashes by the injured party. But," he adds, "as in other cases, the infliction of punishment depends, at last, on the superior force of the injured clan." [71]

687 Failure to attend the busk was penalized by the imposition of fines or confiscation of property, and similar punishments were resorted to for other derelictions in duty to the community. Thus,

[67] Adair, Hist. Am. Inds., p. 23.
[68] See p. 350.
[69] Hodgson, Journey through N. Am., pp. 267-268.
[70] Gregg, Commerce of the Prairies, in Early Western Travels, vol. 20, pp. 315, 316.
[71] Swan in Schoolcraft, Ind. Tribes, vol. v, p. 283.